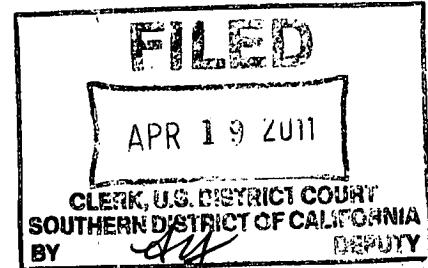


1 Michael L. Feinstein, FL Bar No. 0650382
2 Michael@feinsteinlaw.net
3 MICHAEL L. FEINSTEIN, P.A.
4 888 E. Las Olas Blvd., Suite 700
5 Fort Lauderdale, FL 33301
6 Telephone: (954) 767-9662
7 Facsimile: (954) 527-0848
8 (Pro Hac Vice Application Pending)



9 Christopher S. Morris, Esq., SBN 163188
10 cmorris@amslawyers.com
11 AGUIRRE, MORRIS & SEVERSON LLP
12 444 West C Street, Suite 210
13 San Diego, CA 92101
14 Telephone: (619) 876-5364
15 Facsimile: (619) 876-5368

16 Attorneys for Plaintiff

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19 ERIC WEDDLE, an individual,

Case No. **'11 CV 0817 H NLS**

20 Plaintiff,

COMPLAINT AND DEMAND FOR JURY
21 v.
22 TRIAL

23 BAYER AG CORPORATION, a Foreign
24 corporation; BAYER USA
25 CORPORATION, a Foreign corporation;
26 and ATHLON SPORTS, a Foreign
27 corporation,

28 Defendants.

1 TABLE OF CONTENTS

2	NATURE OF THE ACTION	1
3	JURISDICTION AND VENUE	1
4	PRELIMINARY STATEMENT.....	4
5	THE PHOTOGRAPH.....	4
6	FACTS GIVING RISE TO THE CLAIMS	5
7	FIRST CLAIM FOR RELIEF.....	5
8	Federal Statutory Misappropriation of Image	
9	SECOND CLAIM FOR RELIEF	6
10	California Statutory Misappropriation of Image	
11	THIRD CLAIM FOR RELIEF	7
12	Common Law Misappropriation of Image	
13	FOURTH CLAIM FOR RELIEF	8
14	Conspiracy to Misappropriate	
15	FIFTH CLAIM FOR RELIEF	10
16	Unauthorized Commercial Use of Likeness	
17	SIXTH CLAIM FOR RELIEF.....	11
18	Unfair Competition in Violation of The Lanham Act	
19	SEVENTH CLAIM FOR RELIEF	12
20	False Advertising	
21	EIGHTH CLAIM FOR RELIEF.....	13
22	Civil Action under California's Preservation and Regulation of Competition	
23	PRAYER FOR RELIEF.....	15
24		
25		
26		
27		
28		

1 **COMES NOW** Plaintiff, Eric Weddle, (hereinafter “Weddle”), and files this, his Complaint
2 and Demand for Jury Trial against Bayer AG Corporation (referred to as “Bayer”), Bayer USA
3 Corporation (“Bayer USA”), and Athlon Sports (“Athlon”), (“hereinafter referred to as Defendants”)
4 as grounds states as follows:

NATURE OF THE ACTION

6 This is an action for (1) Federal Statutory Misappropriation of Image, (2) California
7 Misappropriation of Image, (3) Common Law Misappropriation of Image, (4) Conspiracy to
8 Misappropriate, (5) Unauthorized Commercial Use of Likeness; (6) Unfair Competition in
9 violation of the Lanham Act; (7) False Advertising; and (8) Civil Action under California's
10 Preservation and Regulation of Competition.

JURISDICTION AND VENUE

12 1. This is an action for damages in excess of FIVE MILLION DOLLARS
13 (\$5,000,000.00), exclusive of interest, costs and attorney's fees.

14 2. Plaintiff Weddle is a resident of California and a citizen of the United States. At
15 the time of these actions by the Defendants, Weddle was over the age of eighteen (18) and is
16 otherwise *sui juris*.

17 3. Defendant Bayer AG is a foreign corporation who is authorized and conducts
18 business in and maintains its principal place of business in Leverkusen, Germany and is otherwise
19 *sui juris.*

20 4. Defendant Bayer USA is the American subsidiary of Bayer AG and is a foreign
21 corporation who is authorized and conducts business in and maintains its principal place of
22 business in Pittsburgh, Pennsylvania and is otherwise *sui juris*.

23 5. Defendant Athlon Sports is a foreign corporation who maintains its principal place
24 of business in Nashville, Tennessee and is otherwise *sui juris*.

25 6. This Court has original and exclusive jurisdiction over Weddle's claims for
26 unauthorized use of image or likeness for commercial purposes pursuant to 15 U.S.C. § 1125.

27 7. This Court has jurisdiction over Weddle's state law claims pursuant to 28 U.S.C.
28 §1332 as the amount in controversy in this action exceeds \$75,000.00 and there is diversity

1 between Weddle and all Defendants.

2 8. Bayer is subject to personal jurisdiction and service of process under California
3 law as follows:

4 a. Pursuant to Cal Code Civ Proc § 410.10, by an action that arose out
5 of an act done or transaction consummated in the forum, or defendant performed
6 some other act by which he purposefully availed himself of the privilege of
7 conducting activities in the forum, thereby invoking the benefits and protections of
8 its laws

9 b. Pursuant to Cal Code Civ Proc § 410.10, because Bayer committed
10 tortious acts within the State of California by misappropriating Weddle's picture,
11 likeness, and image in violation of Cal Civ Code § 3344, as more fully described
12 herein and Weddle's causes of action set forth in Counts I, II, III, IV, and V of this
13 Complaint arise from said tortious acts.

14 c. Pursuant to Cal Code Civ Proc § 410.10 because Bayer committed
15 tortious acts within the state of California by misappropriating Weddle's image
16 and likeness in violation of the common law of California, as more fully described
17 herein and Weddle's causes of action set forth in Counts I, II and III of this
18 Complaint arise from said tortious acts.

19 9. Bayer USA is subject to personal jurisdiction and service of process under
20 California law as follows:

21 a. Pursuant to Cal Code Civ Proc § 410.10, an action that arose out of
22 an act done or transaction consummated in the forum, or defendant performed
23 some other act by which he purposefully availed himself of the privilege of
24 conducting activities in the forum, thereby invoking the benefits and protections of
25 its laws.

26 b. Pursuant to Cal Code Civ Proc § 410.10, because Bayer USA
27 committed tortious acts within the State of California by misappropriating
28 Weddle's picture, likeness, and image in violation of Cal Civ Code § 3344, as

1 more fully described herein and Weddle's causes of action set forth in Counts I, II,
2 III, IV, and V of this Complaint arise from said tortious acts.

3 c. Pursuant to Pursuant to Cal Code Civ Proc § 410.10, because Bayer
4 USA committed tortious acts within the state of California by misappropriating
5 Weddle's image and likeness in violation of the common law of California, as
6 more fully described herein and Weddle's causes of action set forth in Counts I, II
7 and III of this Complaint arise from said tortious acts.

8 10. Athlon Sports is subject to personal jurisdiction and service of process under
9 California law as follows:

10 a. Pursuant to Cal Code Civ Proc § 410.10, an action that arose out of
11 an act done or transaction consummated in the forum, or defendant performed
12 some other act by which he purposefully availed himself of the privilege of
13 conducting activities in the forum, thereby invoking the benefits and protections of
14 its laws.

15 b. Pursuant to Cal Code Civ Proc § 410.10 because Athlon Sports
16 committed tortious acts within the State of California by misappropriating Eric
17 Weddle's picture, likeness and image in violation of Cal Civ Code § 3344, as more
18 fully described herein and Weddle's causes of action set forth in Counts I, II, III,
19 IV, and V of this Complaint arise from said tortious acts.

20 c. Pursuant to Cal Code Civ Proc § 410.10 because Athlon Sports
21 committed tortious acts within the State of California by misappropriating
22 Weddle's image and likeness in violation of the common law of California, as
23 more fully described herein and Weddle's causes of action set forth in Counts I, II
24 and III of this Complaint arise from said tortious acts.

25 11. All conditions precedents to this action have been performed, have occurred, or
26 have been waived.

27 ///

28 ///

PRELIMINARY STATEMENT

12. This case arises out of the Defendants improper and unauthorized use of Weddle's likeness and image. Defendant Bayer and subsidiary Bayer USA used Weddle's likeness and image as part of a marketing campaign to promote Athlon Sports' 2009 Football Handbook. The subject photograph is attached hereto as Exhibit "A".

13. Defendants falsely used the likeness of Plaintiff Weddle to its benefit in order to falsely advertise and promote its product to the general public without the consent or knowledge of the Plaintiff.

THE PHOTOGRAPH

14. While at the University of Utah, a photo of the Plaintiff Weddle was taken while he was participating in an intercollegiate athletic event during the 2006 College Football Season. Such photograph is clearly one of Weddle, as the photo bears the number worn on his collegiate uniform¹, which is the number thirty two (32). See Exhibit "A."

15. Plaintiff was an outstanding student-athlete at the University of Utah from 2003-2006, and during such time earned Freshman All-American First Team honors (2003), All-Mountain West Conference Honorable Mention (2003), Mountain West Conference Defensive Player of the Year (2005), First-Team- All Mountain West Conference (2005), First Team All American (2006), Second-Team All American Honors (2005), and Emerald MVP honors in 2005.

16. Weddle was drafted by the San Diego Chargers in the Second (2nd) Round of the 2007 NFL Draft, when the Chargers traded the 62nd pick (2nd), 93rd pick (3rd), and a 2008 3rd rounder and 2008 5th rounder to the Chicago Bears for the right to move up to the 37th pick and select Weddle.

17. Since being drafted by the San Diego Chargers Weddle has become earned All-Pro honors by the Associated Press, started almost every NFL game in his professional career for such team, and has established himself as a public figure and a standout NFL player, who is ranked among the top free agents going into the 2011 NFL league year.

111

¹ The Number #32 is currently worn by Eric Weddle while playing for the San Diego Chargers.

18. Additionally, due to his public recognition Plaintiff has become a spokesperson for the Church of Latter-day Saints as well as a role model for the general public due to his outstanding character and involvement with such organization and the community.

19. The photograph in question has never been licensed, approved or authorized by Plaintiff Weddle for use in any manner whatsoever by these Defendants, and certainly not for use in conjunction with the distribution, sale, or marketing of Bayer antacid & pain relief medicine nor for the distribution, sale, or marketing of Athlon Sports magazine.

FACTS GIVING RISE TO THE CLAIMS

20. In August 2009, Athlon Sports and Bayer USA, a subsidiary of Bayer AG, engaged in a joint national campaign to promote Bayer USA's product, Alka-Seltzer, and Athlon Sports' 2009 Football Handbook.

21. Upon the launch of such campaign, Athlon Sports Department was in charge of selecting such picture for the campaign of Defendants.

22. Athlon Sports and Bayer USA, a subsidiary of Bayer AG, selected a photo from an online photo database of Weddle, and ran such marketing campaign with Plaintiffs' likeness starting in August 2009. A copy of the online photograph used in such promotion is attached hereto as Exhibit "B."

23. On or about March 16, 2010, the undersigned sent a demand letter on behalf of Plaintiff demanding that Defendants cease and desist from using such image. A copy of the demand letter sent to Defendants is attached hereto as Exhibit "C."

24. The Athlon-Alka-Seltzer promotional boxes were nationally promoted and sold at Walmarts, Walgreens, CVS' and pharmacies throughout the United States with Weddle's image without the written or oral consent of Weddle or an agent acting on his behalf.

FIRST CLAIM FOR RELIEF

Federal Statutory Misappropriation of Image

25. Plaintiff incorporates each and every allegation alleged in the preceding paragraphs as though fully set forth herein.

111

1 26. This is an action against Defendants Bayer, Bayer USA and Athlon Sports for
2 statutory misappropriation of Weddle's image and likeness for commercial purposes pursuant to
3 15 USCS § 1125.

4 27. Defendants Bayer, Bayer USA and Athlon Sports published, printed, displayed or
5 otherwise publicly used Weddle's image and likeness without his expressed written or oral
6 consent for purposes of trade or for other commercial or advertising purposes by among other
7 things:

8 a. Printing and copying Weddle's image and likeness and utilizing it
9 for the cover of Bayer's Alka Seltzer antacid boxes.

10 b. Printing and copying Weddle's image and likeness and utilizing it
11 as an advertisement to promote Athlon Sports college football preview magazine.

16 28. The foregoing acts by Bayer, Bayer USA and Athlon Sports are in violation of 15
17 USCS § 1125 and have damaged Weddle.

18 29. Plaintiff has retained the undersigned to represent him in this matter and is obligated
19 to pay a reasonable fee for the services being provided on its behalf.

20 30. Accordingly, Plaintiff Weddle is entitled to the remedies Provided in 15 USCS §
21 1125.

SECOND CLAIM FOR RELIEF

California Statutory Misappropriation of Image

24 31. Plaintiff incorporates each and every allegation alleged in the preceding
25 paragraphs as though fully set forth herein.

26 32. This is an action against Defendants Bayer, Bayer USA Athlon Sports for statutory
27 misappropriation of Weddle's image and likeness for commercial purposes pursuant to Cal Civ
28 Code § 3344.

33. Defendants Bayer, Bayer USA and Athlon Sports published, printed, displayed or otherwise publicly used Weddle's image and likeness without his expressed written or oral consent for purposes of trade or for other commercial or advertising purposes by among other things:

a. Printing and copying Weddle's image and likeness and utilizing it for the cover of Bayer's Alka Seltzer antacid boxes.

b. Printing and copying Weddle's image and likeness and utilizing it as an advertisement to promote Athlon Sports college football preview magazine.

c. Intentionally and purposefully continuing to utilize Weddle's image and likeness for commercial or advertising purposes in connection with the sale and distribution of Alka-Seltzer antacid tablets even after being notified by Weddle.

34. The foregoing acts by Bayer, Bayer USA and Athlon Sports are in violation of Cal Civ Code § 3344 and have damaged Weddle.

35. Plaintiff has retained the undersigned to represent him in this matter and is obligated to pay a reasonable fee for the services being provided on its behalf.

36. Accordingly, Plaintiff Weddle is entitled to the remedies provided in Cal Civ Code § 3344.

THIRD CLAIM FOR RELIEF

Common Law Misappropriation of Image

37. Plaintiff incorporates each and every allegation alleged in the preceding paragraphs as though fully set forth herein.

38. This is an action against Defendants Bayer, Bayer USA and Athlon Sports for common law misappropriation of Weddle's image and likeness.

39. Defendants Bayer, Bayer USA and Athlon Sports published, printed, displayed or otherwise publicly used Weddle's image and likeness without his express written or oral consent for purposes of trade or for other commercial or advertising purposes by among other things:

111

1 a. Printing and copying Weddle's image and likeness and utilizing it
2 for the cover of Alka-Seltzer antacid boxes.

3 b. Printing and copying Weddle's image and likeness and utilizing it
4 as an advertisement to promote Athlon Sports college football preview magazine.

5 c. Intentionally and purposefully continuing to utilize Weddle's image
6 and likeness for commercial or advertising purposes in connection with the sale
7 and distribution of Alka-Seltzer antacid tablets even after being notified by
8 Weddle.

9 40. The foregoing acts by Defendants Bayer, Bayer USA and Athlon Sports constitute
10 misappropriation of Weddle's image and likeness for commercial purposes without his consent
11 and have damaged Weddle.

12 41. Defendants Bayer, Bayer USA and Athlon Sports had actual knowledge of the
13 wrongfulness of their conduct and the high probability that such use of the photograph would
14 cause injury and/or damage Weddle.

15 42. Additionally, Defendants Bayer, Bayer USA and Athlon Sports knew that such
16 conduct would result in injury and/or damage to Weddle, and despite that knowledge, Defendants
17 intentionally pursued their course of conduct resulting in injury or damage to Weddle.

18 43. In the alternative, and even if they acted without such actual knowledge, the
19 conduct of Bayer, Bayer USA and Athlon Sports was so reckless that it constituted a conscious
20 disregard for our indifference to the rights of Weddle. As a result, Weddle is entitled to recover
21 punitive damages against Bayer, Bayer USA and Athlon Sports pursuant to California Law.

22 44. Plaintiff has retained the undersigned to represent him in this matter and is obligated
23 to pay a reasonable fee for the services being provided on its behalf.

24 **FOURTH CLAIM FOR RELIEF**

25 **Conspiracy to Misappropriate**

26 45. Plaintiff incorporates each and every allegation alleged in the preceding
27 paragraphs as though fully set forth herein.

28 ///

1 46. This is an action against Defendants Bayer, Bayer USA and Athlon Sports for
2 conspiracy to misappropriate Weddle's image and likeness.

3 47. Defendants Bayer, Bayer USA and Athlon Sports conspired to publish, print,
4 display or otherwise publicly use Weddle's image and likeness without his express written or oral
5 consent for purposes of trade or for other commercial or advertising purposes and took actions
6 intended to further that conspiracy among other things:

7 a. Printing and copying Weddle's image and likeness and utilizing it
8 for the cover of Alka Seltzer antacid boxes.

9 b. Printing and copying Weddle's image and likeness and utilizing it
10 as an advertisement to promote Athlon Sports college football preview magazine.

11 c. Intentionally and purposefully continuing to utilize Weddle's image
12 and likeness for commercial or advertising purposes in connection with the sale
13 and distribution of Alka Seltzer antacid tablets even after being notified by
14 Weddle.

15 48. The foregoing acts by Defendants Bayer, Bayer USA and Athlon Sports constitute
16 conspiracy to misappropriate Weddle's image and likeness for commercial purposes without his
17 consent and have damaged Weddle.

18 49. Defendants Bayer, Bayer USA and Athlon Sports had actual knowledge of the
19 wrongfulness of their conduct and the high probability that such use of the photograph would
20 cause injury and/or damage Weddle.

21 50. Additionally, Defendants Bayer, Bayer USA and Athlon Sports knew that such
22 conduct would result in injury and/or damage to Weddle, and despite that knowledge, Defendants
23 intentionally pursued their course of conduct resulting in injury or damage to Weddle.

24 51. In the alternative, and even if they acted without such actual knowledge, the
25 conduct of Bayer, Bayer USA and Athlon Sports was so reckless that it constituted a conscious
26 disregard for our indifference to the rights of Weddle. As a result, Weddle is entitled to recover
27 punitive damages against Bayer, Bayer USA and Athlon Sports pursuant to California Law.

28 ///

1 52. Plaintiff has retained the undersigned to represent him in this matter and is
2 obligated to pay a reasonable fee for the services being provided on its behalf.

FIFTH CLAIM FOR RELIEF

Unauthorized Commercial Use of Likeness

5 53. Plaintiff incorporates each and every allegation alleged in the preceding
6 paragraphs as though fully set forth herein.

7 54. This is an action against Defendants Bayer, Bayer USA and Athlon Sports for the
8 unauthorized commercial use of Weddle's image and likeness.

9 55. Bayer, Bayer USA and Athlon Sports used Weddle's image and likeness without
10 his express written or oral consent for purposes of trade or for other commercial or advertising
11 purposes by:

12 a. Printing and copying Weddle's image and likeness and utilizing it
13 for the cover of Alka Seltzer antacid boxes.

14 b. Printing and copying Weddle's image and likeness and utilizing it
15 as an advertisement to promote Athlon Sports college football preview magazine.

20 56. The foregoing acts by Bayer, Bayer USA and Athlon Sports constitute
21 unauthorized use of Weddle's image and likeness for commercial purposes without his consent
22 and have damaged Weddle.

23 57. Alka-Seltzer and Athlon Sports had actual knowledge of the wrongfulness of their
24 conduct and of the high probability that injury or damage to Weddle would result and despite that
25 knowledge, intentionally pursued their course of conduct resulting in injury or damage to Weddle.

26 58. In the alternative, and even if they acted without such actual knowledge, the
27 conduct of Defendants Bayer, Bayer USA and Athlon Sports was so reckless that it constituted a
28 conscious disregard for our indifference to the rights of Weddle. As a result, Weddle is entitled to

1 recover punitive damages against Defendants Bayer, Bayer USA and Athlon Sports pursuant to
2 Federal and California law.

3 59. Plaintiff has retained the undersigned to represent him in this matter and is obligated
4 to pay a reasonable fee for the services being provided on its behalf.

5 **SIXTH CLAIM FOR RELIEF**

6 **Unfair Competition in Violation of The Lanham Act**

7 60. Plaintiff incorporates each and every allegation alleged in the preceding
8 paragraphs as though fully set forth herein.

9 61. Defendants' acts alleged herein constitute unfair competition and unfair deceptive
10 acts or practices in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

11 62. Defendants infringing activities are likely to and are actually causing confusion,
12 mistake and deception among members of the public as to whether the Plaintiff is associated with
13 or have endorsed the Defendants' product. Defendant's unlawful activities in utilizing the
14 Plaintiff's name and image have caused and are continuing to cause damage to the Plaintiff.

15 63. Defendants Bayer USA and Athlon Sports used Weddle's image and likeness
16 without his express written or oral consent for purposes of trade or for other commercial or
17 advertising purposes by:

18 a. Printing and copying Weddle's image and likeness and utilizing it
19 for the cover of Alka Seltzer antacid boxes.

20 b. Printing and copying Weddle's image and likeness and utilizing it
21 as an advertisement to promote Athlon Sports college football preview magazine.

22 c. Intentionally and purposefully continuing to utilize Weddle's image
23 and likeness for commercial or advertising purposes in connection with the sale
24 and distribution of Alka Seltzer antacid tablets even after being notified by
25 Weddle.

26 64. The foregoing acts by Bayer, Bayer USA and Athlon Sports constitute
27 unauthorized use of Weddle's image and likeness for commercial purposes without his consent
28 and have damaged Weddle.

65. Alka-Seltzer and Athlon Sports had actual knowledge of the wrongfulness of their conduct and of the high probability that injury or damage to Weddle would result and despite that knowledge, intentionally pursued their course of conduct resulting in injury or damage to Weddle.

66. In the alternative, and even if they acted without such actual knowledge, the conduct of Defendants Bayer, Bayer USA and Athlon Sports was so reckless that it constituted a conscious disregard for our indifference to the rights of Weddle. As a result, Weddle is entitled to recover punitive damages against Defendants Bayer, Bayer USA and Athlon Sports pursuant to Federal and California law.

67. Plaintiff has retained the undersigned to represent him in this matter and is obligated to pay a reasonable fee for the services being provided on its behalf.

SEVENTH CLAIM FOR RELIEF

False Advertising

68. Plaintiff incorporates each and every allegation alleged in the preceding paragraphs as though fully set forth herein.

69. This is a claim for violation of Cal Bus & Prof Code § 17500, for false and misleading advertising.

70. Defendants have advertised and falsely induced the public to believe that Plaintiff is associated with or have endorsed the Defendants' products and/or that Plaintiff is associated with the product promoted by Defendants.

71. Defendants, Bayer USA and Athlon Sports used Weddle's image and likeness without his express written or oral consent for purposes of trade or for other commercial or advertising purposes by:

- a. Printing and copying Weddle's image and likeness and utilizing it for the cover of Alka Seltzer antacid boxes.

b. Printing and copying Weddle's image and likeness and utilizing it as an advertisement to promote Athlon Sports college football preview magazine.

c. Intentionally and purposefully continuing to utilize Weddle's image and likeness for commercial or advertising purposes in connection with the sale

1 and distribution of Alka Seltzer antacid tablets even after being notified by
2 Weddle.

3 72. The foregoing acts by Bayer, Bayer USA and Athlon Sports constitute
4 unauthorized use of Weddle's image and likeness for commercial purposes without his consent
5 and have damaged Weddle.

6 73. Alka-Seltzer and Athlon Sports had actual knowledge of the wrongfulness of their
7 conduct and of the high probability that injury or damage to Weddle would result and despite that
8 knowledge, intentionally pursued their course of conduct resulting in injury or damage to Weddle.

9 74. In the alternative, and even if they acted without such actual knowledge, the
10 conduct of Defendants Bayer, Bayer USA and Athlon Sports was so reckless that it constituted a
11 conscious disregard for our indifference to the rights of Weddle. As a result, Weddle is entitled to
12 recover punitive damages against Defendants Bayer, Bayer USA and Athlon Sports pursuant to
13 Federal and California law.

14 75. Plaintiff has retained the undersigned to represent him in this matter and is obligated
15 to pay a reasonable fee for the services being provided on its behalf.

16 **EIGHTH CLAIM FOR RELIEF**

17 **Civil Action under California's Preservation and Regulation of Competition**

18 76. Plaintiff incorporates each and every allegation alleged in the preceding
19 paragraphs as though fully set forth herein.

20 77. This is an action for damages pursuant to California's Preservation and Regulation
21 of Competition Cal Bus & Prof Code § 17200.

22 78. California's Preservation and Regulation of Competition, makes it unlawful for
23 "unfair methods of competition, unconscionable acts of practices and unfair or deceptive acts or
24 practices in a conduct of any trade or commerce." Specifically, Defendants (a) failed to properly
25 advise and inform said individuals, including Plaintiff, of their intent regarding the use and
26 exposure of Plaintiff's likeness and image to be marketed, distributed and sold in this district
27 and across the world, (b) failed to advise, inform or otherwise notify Plaintiff of their intent to
28 use his image and likeness without his consent on the cover of such Bayer AG products.

1 79. Defendants , Bayer USA and Athlon Sports used Weddle's image and likeness
2 without his express written or oral consent for purposes of trade or for other commercial or
3 advertising purposes by:

4 a. Printing and copying Weddle's image and likeness and utilizing it
5 for the cover of Alka Seltzer antacid boxes.

6 b. Printing and copying Weddle's image and likeness and utilizing it
7 as an advertisement to promote Athlon Sports college football preview magazine.

8 c. Intentionally and purposefully continuing to utilize Weddle's image
9 and likeness for commercial or advertising purposes in connection with the sale
10 and distribution of Alka Seltzer antacid tablets even after being notified by
11 Weddle.

12 80. The foregoing acts by Bayer, Bayer USA and Athlon Sports constitute
13 unauthorized use of Weddle's image and likeness for commercial purposes without his consent
14 and have damaged Weddle.

15 81. Alka-Seltzer and Athlon Sports had actual knowledge of the wrongfulness of their
16 conduct and of the high probability that injury or damage to Weddle would result and despite that
17 knowledge, intentionally pursued their course of conduct resulting in injury or damage to Weddle.

18 82. In the alternative, and even if they acted without such actual knowledge, the
19 conduct of Defendants Bayer, Bayer USA and Athlon Sports was so reckless that it constituted a
20 conscious disregard for our indifference to the rights of Weddle. As a result, Weddle is entitled to
21 recover punitive damages against Defendants Bayer, Bayer USA and Athlon Sports pursuant to
22 Federal and California law.

23 83. As a direct and proximate result of the activities and conduct in violation of
24 California's Preservation and Regulation of Competition, Plaintiff is an aggrieved person as
25 defined by said statue and has suffered damages with the meaning of the said statue.

26 84. Plaintiff has retained the undersigned to represent him in this matter and is
27 obligated to pay a reasonable fee for the services being provided on its behalf.

28 ///

PRAYER FOR RELIEF

WHEREFORE plaintiff prays as follows:

UPON ALL CLAIMS FOR RELIEF:

1. Actual damages, including an amount, which would have been a reasonable royalty for the use of Eric Weddle's image and likeness;
2. Punitive damages as provided by law;
3. Attorneys' fees as provided by Cal. Civ. Code § 3344; and
4. Any further relief as this Court deems just and proper.

Respectfully submitted,

MICHAEL L. FEINSTEIN, P.A.

Dated: April 13, 2011

Michael L. Feinstein, FL Bar No. 0650382
Attorneys for Plaintiff
(*Pro Hac Vice Application Pending*)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ERIC WEDDLE

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael L. Feinstein, P.A. (Pro Hac Vice Application Pending)
888 E. Las Olas Blvd. Suite 700

DEFENDANTS

BAYER AG CORPORATION, BAYER USA CORPORATION,
ATHLON SPORTS

County of Residence of First Listed Defendant Germany

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

11CV0817H NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity *AO*
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input checked="" type="checkbox"/> 890 Other Statutory Actions	
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	IMMIGRATION	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 950 Constitutionality of State Statutes	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): *28:1331*

Brief description of cause:

(1) Federal Statutory Misappropriation of Image (2) California Misappropriation of Image (3) Common

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): *MX*

DOCKET NUMBER

DATE

04/13/2011

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # *25185*AMOUNT *\$ 350*APPLYING ICP *16 4/19/11*

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

DUPLICATE

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS025285
Cashier ID: kdelabar
Transaction Date: 04/19/2011
Payer Name: MICHAEL FEINSTEIN

CIVIL FILING FEE

For: WEDDLE V. BAYER
Case/Party: D-CAS-3-11-CV-000817-001
Amount: \$350.00

CHECK

Check/Money Order Num: 7251
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.